

Current Issues in Evictions: The Sequel

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Outline

- Current Events
- Review of CARES Act
- Governor's EO 2020-49
- Supreme Court AO 2020-119
- FAQs
- Discussion Points
- Questions

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Current Events

- March 24: AZ Governor's Executive Order 2020-14 suspending evictions for 120 days for Covid-qualifying situations
- July 16: AZ Governor's EO 2020-49 extends protections through October 31 (with major changes after August 21)
- March 27: CARES ACT
- Moratorium on evictions on properties with federally backed mortgages or federal subsidies for 120 days (15 USC § 9028)

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Current Events

- May 20: Supreme Court AO 2020-79 (Authorizing Limitation of Court Operations)
- July 15: Supreme Court AO 2020-114, replaces AO 2020-79
- No automatic change of judge through 12/31/2020!
- July 7: Supreme Court AO 2020-105 (Disposition of Residential Eviction Cases)

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Current Events

- July 22: Supreme Court AO 2020-119 replaces 2020-105
- Includes provisions on pleadings; case calendaring; hearings; amendment of judgments and enforcement of writs; excluded time calculation; and judicial officer training

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MCJC Best Practices

- March 26: Implementation of EO 2020-14
- Amended April 29: Addresses Motions to Compel and Status of the Parties
- 2d Amendment June 24:
- Addresses Expiration of EO and CARES Act
- Find podcasts here:
- <https://anchor.fm/charles-adornetto>



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Expirations

- CARES Act: Expires July 25
- (May only give 30 day notice for nonpayment of rent after expiration of Act)
- EO 2020-49: Major changes after August 21; expires October 31
- Exclusion of time: Expires December 15
- No change of judge: Expires December 31

CARES Act

- NOT Covid-related
- Applies to all tenants, not just those affected by COVID-19
- Forebearance for single and multifamily properties with federally backed loans
- Fannie, Freddie, HUD
- And federally assisted housing

CARES Act

- Eviction moratorium for properties with federally backed loans
- HUD has determined applies only to prevent non-payment of rent evictions
- Must ensure plaintiff verifies property is **or was** not protected by CARES Act— **NOW required to be in the Complaint and attested to at the initial appearance**

CARES Act Attestation

- Can be found at <https://www.azcourts.gov/selfservicecenter/Landlord-Tenant-Disputes-Eviction-Actions/Forms-and-Notices>

Case Name: _____ Case Number: _____
Date Filed: _____

ATTESTATION OF PLAINTIFF - CARES Act Compliance by Plaintiff

I, _____ landlord, do attest that the rental property in this complaint
☐ was covered under the CARES Act that was enacted by Congress and signed into law on March 25, 2020.
☐ was not covered under the CARES Act that was enacted by Congress and signed into law on March 25, 2020.

INSTRUCTIONS TO PLAINTIFF:

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CARES Act Protections Continue Post-expiration

- Eviction complaints delayed by CARES Act:
- **AO 2020-119 requires attestation in Complaint and at hearing that CARES Act has been complied with and whether property is/was protected by CARES Act**
- **Judge must ask if property HAD BEEN protected by CARES Act**
- Non-payment of rent requires **30 day** notice served AFTER expiration of the Act
- **No late fees or other penalties** relating to nonpayment of rent

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EO 2020-14; EO 2020-49 through Aug 21

- For non-payment of rent and other eviction cases excluding material non-compliance and immediate evictions
- **Establishes that Constables temporarily delay enforcement of Eviction Action Orders for *residential premises* if COVID-19 reason exists:**
 - 1a Quarantine due to illness
 - 1b Ordered by doctor to self-quarantine
 - 1c Someone else in the household with COVID-19
 - 1d Health conditions that puts tenant at risk
 - 1e Substantial loss of income (job loss, less income, need to take care of homebound children, other pertinent circumstances)

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EO 2020-14; EO 2020-49 through Aug 21

- Tenant, lessee or resident must:
- Notify landlord in writing
- Attach documentation if any
- Acknowledge terms of lease, including obligation to pay rent, remain in effect
- Landlord cannot interpret COVID-19 as health and safety reason to terminate lease

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EO 2020-14; EO 2020-49

- "Unless a court determines on motion of the parties that enforcement is necessary in the interest of justice or is in accordance A.R.S. § 33-1368(A),, all Arizona Peace Officer Standards and Training Board certified law enforcement officers and any persons subject to the jurisdiction of the Constable Ethics Standards and Training Board, shall temporarily delay enforcement of eviction action orders for residential premises when one of the following circumstances exist and are documented to the landlord or property owner:...."

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EO 2020-14 and 49 DO NOT -

- Prevent the eviction action/hearing/judgment from going forward in non-payment of rent cases.
- Apply to eviction complaints filed pursuant to A.R.S. 33-1368(A)
 - Material or irreparable breach
 - Non-compliance with rental agreement after notice and failure to cure

(Note: In some cases an argument can be made that the non-compliance cannot be cured due to COVID circumstances

e.g. An infected or exposed unauthorized guest or person residing there)

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EO 2020-14; EO 2020-49 through Aug 21

- Constable goes to execute writ
- Tenant informs constable they have a COVID reason to delay enforcement
- Constable should allow tenant time to notify landlord in writing if they have not done so
- Constable does not execute the writ
- Landlord must file motion to compel execution of the writ if they believe tenant's reason is insufficient or it is in the interest of justice to evict

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HOW LONG MUST THE DELAY REMAIN IN EFFECT?

- **AO 2020-105 and 119**
- **Until a Motion to Compel is granted by the court**
- The court shall determine whether to grant the motion using the procedure provided in Rule 14(b)(2) of the Rules of Procedure for Eviction Actions.
- An order granting the motion shall not permit enforcement of the writ until five days after the order is issued.

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EO 2020-14 and EO 2020-49

- Creates unprecedented question regarding status of the parties
- MCJC BP solution:
- Lease "continues" until tenant returns key or writ is executed
- One amended judgment to reflect correct amount of rent due (if tenant still in property)
- **AO 2020-105 and 119 Permit amended judgment with writ to follow after 5 days**

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EO 2020-49 **after August 21**

- Beginning on **August 22, 2020**, a tenant must do the following things to delay eviction:
- 3a) (Re)notify their landlord or property owner in writing with supporting documentation of their **(1) ongoing financial hardship** as result of COVID-19 and **(2) request for a payment plan** to be put in place; and
- 3b) Provide their landlord or property owner a copy, with any available supporting documentation, of their **(3) completed pending application for rental assistance** through a state, city, county or nonprofit program.
- 2) **(4)** Acknowledge that the contractual terms of the lease remain in effect
- Provide this information to the constable, or court if requested.

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Governor's Guidance on EO 2020-49

- Attached and can be found at:
https://azgovernor.gov/sites/default/files/executive_order_2020-49-what_you_need_to_know_1.pdf
- Includes links for tenants to find rental assistance and unemployment assistance
- AO 2020-119 also recognizes qualifications for delay of evictions change on August 22, 2020**

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Supreme Court's Tenant Checklist

- Attached. Also includes links.

TENANT CHECKLIST
Actions a Tenant Must Take Based on
Executive Order [2020-49](#) (Continued Postponement of Eviction Enforcement Actions)

- Gov. Ducey delayed the enforcement of eviction orders for tenants experiencing qualifying medical or financial hardships through August 21, 2020 and financial hardships through October 31, 2020 due to COVID-19.
- To be eligible for a continuing delay in the enforcement of eviction from your residence, by **August 21, 2020**, or if you request a delay after that date, you must:
 - Renotify or notify your landlord or property owner in writing with supporting documentation of your ongoing financial hardship due to a substantial loss of income resulting from COVID-19 including job loss or lay off, reduction in pay, child care responsibility, or a quarantine order;
 - Request a payment plan;

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Evictions after protections expire:
3 situations to plan for

- (1) New eviction cases that were not filed because of the pandemic or precluded by the CARES Act;
- (2) Cases where Landlords obtained judgments but did not obtain writs; and
- (3) Cases with judgments and writs but enforcement of the writ was delayed.

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Evictions after protections expire:
1 New eviction filings

- Delayed by pandemic only:
- **Business as usual—except AO 2020-105 and 119 require attestation in Complaint and at hearing whether CARES Act applied and has been complied with**
- Ensure not over \$10,000, exclusive of costs, interest and attorneys' fees
- Plaintiffs may waive amounts over \$10,000 to stay in jurisdiction

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Evictions after protections expire:
1 New eviction filings

- Delayed by CARES Act:
- **AO 2020-105 and 119 require attestation in Complaint and at hearing whether CARES Act applied and has been complied with**
- Non-payment of rent requires 30 day notice served AFTER expiration of the Act
- No late fees or other penalties relating to nonpayment of rent

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Was CARES Act, not 30 day notice

- Remember to check!
- Discussion:
- What to do if only 5 day notice?
- What if gave only 5 day notice but waited 30 days to file?

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Evictions after protections expire:

2 Judgments without writs and
3 Judgments with delayed writs

- “45 day rule” actually means explanation is required if writ request is more than 45 days after the judgment per RPEA Rule 14(b)(2)
- AO 2020-105 and 119 require a Motion to Compel to enforce the writ
- Hold hearing so that tenant has notice writ may be executed and to amend judgment

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Evictions after protections expire:

Amended judgments

- AO 2020-105 and 119 allow landlords to file motions to amend eviction judgments
- AO 2020-119 clarifies amended judgments only when tenant remains in property
- Avoids tenants from having second eviction judgment
- Necessary because tenancy continued even though eviction judgment was signed

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Evictions after protections expire:
Single court hearing

- (Motion to compel and amend judgment)
- Resolve all accrued rent through an amended judgment
- Set meaningful writ date (AO 2020-105 and 119 require 5 days after an amended judgment)
- AO 2020-119 clarifies “excluded time” does not apply to writs
- Inform tenant of both

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AO2020-119

- I. Complaints:
- For any pleading in an eviction, **civil or small claims action** for non-payment of rent or for a judgment for rent for any part of the period of time from March 27, 2020 through July 25, 2020, the plaintiff shall attest in the initial pleading or by other writing **provided to the court and the defendant with the initial pleading** whether the property in which the defendant resides **is or was** covered under the CARES Act.

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AO2020-119

- II. Case Calendaring:
- A court **should not** schedule more than 25 eviction cases in an hour period on the court’s calendar.
- All cases **shall** be set for a specific time slot, e.g., 9:00 A.M. – 10:00 AM.
- When feasible, courts should schedule residential eviction actions within the timeframes established by the Rules of Procedure for Eviction Actions and by applicable Arizona statutes.

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AO2020-119

- III. Hearings:
- 1. Parties, attorneys and witnesses may appear remotely
- 2. Judges shall liberally grant continuances and make accommodations for Covid
- 3. At initial hearing, plaintiff or attorney shall attest on record that plaintiff has complied with all requirements of applicable **state and federal** eviction statutes and Supreme Court rules
- 4. Parties may agree to a Consent Agreement with a conditional dismissal (see attached Form)

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Consent Order for Conditional Dismissal

- With the agreement of the parties, the judge may continue a proceeding to afford the parties the opportunity to reach a consent agreement to resolve the case. Upon presentation of a consent agreement, the judge may enter a consent order for conditional dismissal of the case. A sample consent order is included with this administrative order as Attachment A. The Administrative Director is authorized to approve amendments to this form.

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AO2020-119

- IV. Enforcing Writs and Amended Judgments:
- On motion of the plaintiff, for good cause, the court may order amendment of an eviction judgment in a case in which enforcement of the writ of restitution was delayed due to Executive Order 2020-14 or Executive Order 2020-49 and **the tenant remained in possession of the residence**. If the judgment is amended, the existing writ shall be quashed, and a new writ of restitution shall not be issued until five calendar days after the amended judgment is signed.

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AO2020-119

- IV. Enforcing Writs and Amended Judgments:
- Enforcement of a writ of restitution that has been delayed by Executive Order 2020-14 or 49 shall not proceed until the court grants a motion to compel enforcement of the writ filed by the plaintiff. The court shall determine whether to grant the motion using the procedure provided in Rule 14(b)(2) of the Rules of Procedure for Eviction Actions. An order granting the motion shall not permit enforcement of the writ until five days after the order is issued.

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AO2020-119

- V. Excluded time:
- The period of March 18, 2020 through **December 15, 2020** is excluded from calculation of time under rule provisions and statutory procedures that require court proceedings to be held within a specific period of time, including the Rules of Procedure for Eviction Actions. **This exclusion of time does not apply to issuance of the writ of restitution.**
- VI. Training
- This training is mandatory for all judicial officers, including judges pro tempore, who hear eviction cases.

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FAQs

- Q: How will tenants receive the order that the judge ruled on motion to compel and have 5 days before being locked out?
- A: Preferably, tenant was at hearing. If not, in mail or with Constable.
- Q: How will defendants be notified of plaintiff filing amended judgment if they have already been evicted and moved?
- A: Should not be an amended judgment if tenant already moved out—should have been a civil suit. See MCJC 2d Amended Best Practice.
- Q: What is the process for the defendant to 1) challenge the plaintiff's attestation to the court or addition to the original filing or 2) present evidence on their own to the court that the eviction action was in violation of the CARES Act.
- A: Hold a trial.

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FAQs

- Q: Is there a consequence for not providing CARES Act verification or explanation for what would happen if the CARES Act was violated?
- A: Can either allow to amend or dismiss and require plaintiff to re-file.
- Q: Is there a process for verifying the information provided by the plaintiff or remedy for if the information provided is incorrect?
- A: No. See Rule 2.9c, Arizona Code of Judicial Conduct:
- Except as otherwise provided by law, a judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

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Special Action Ruling

- Gregory Real Estate and Management v. Keegan, Maricopa Superior CV 2020-007629, 7-22-20
- EO 2020-14 is constitutional
- It does not violate Article 2, Section 17 (taking), or Article 3 (separation of powers) of the Arizona Constitution.

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Discussion Points

1. Are evictions based on the lease not being renewed covered by the EO 2020-49 ?
2. What documentation will be required for tenant to show to landlord and constable?
3. Will constable give additional time for additional documentation?
4. Does a request for a payment plan have to be reasonable?

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Questions?

- Attachments:
- 1 Governor's Executive Order 2020-49
- 2 Governor's Guidance on EO 2020-49
- 3 Supreme Court AO 2020-119
- 4 Conditional Order for Conditional Dismissal
- 5 Supreme Court Landlord Attestation
- 6 Supreme Court Tenant Checklist
- 7 Supreme Court CARES Act 30 Day Notice
- 8 Gregory Real Estate and Management v. Keegan

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